

HON. MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

HEATHER HALEY, as an individual and as a  
representative of the classes,

Plaintiff,

v.

TALENTWISE, INC. f/k/a/ TALENTWISE  
SOLUTIONS, LLC f/k/a INTELIOUS  
SCREENING SOLUTIONS, LLC, ,

Defendant.

Case No. 2:13-cv-01915-MJP

**DECLARATION OF DANIEL C.  
BRYDEN**

Note on Motion Calendar:  
September 5, 2014

I, Daniel C. Bryden, hereby declare the following:

1. I am one of the Plaintiff's attorneys in this matter. I submit this Declaration pursuant to Fed. R. Civ. P. 56(d), and in opposition to Defendant's motion for partial summary judgment.

2. Attached as exhibits are true and correct copies of the following:

**EXHIBIT A:** Excerpts from the Deposition of Carl Cogdill (June 24, 2014);

**EXHIBIT B:** Biography of Pamela Q. Devata, Seyfarth Shaw LLP,  
<http://www.seyfarth.com/PamelaDevata> (last visited 8/19/14);

**EXHIBIT C:** Email from Judy Fenney to Jason Faranoff (Mar. 4, 2012) included within email string from Judy Fenney to Jeff Green (Mar. 12, 2012) [NKA0058154] – *filed under seal*;

**EXHIBIT D:** Email from Eleanor Macapia to Judy Fenney (Oct. 23, 2012) included within email string from Judy Fenney to Shana Nishihira; Eleanor Macapia (Oct. 23, 2012) [TW\_HALEY\_E\_033791];

**EXHIBIT E:** NAPBS Compliance Review (May 29, 2012) [TW\_HALEY\_E\_002736];

**EXHIBIT F:** Excerpts from the Deposition of Eleanor “Ele” Macapia (June 5, 2014);

**EXHIBIT G:** NAPBS Compliance Review (May 29, 2012) [TW\_HALEY\_E\_025552];

**EXHIBIT H:** Email from Eleanor Macapia to Adam Plenkovich (June 12, 2012), included within email string from Shana Nishihira to Eleanor Macapia; Adam Plenkovich (July 12, 2012) [TW\_HALEY\_E\_027623];

**EXHIBIT I:** Email from Shana Nishihira to Tamara Anderson (Dec. 7, 2012) [TW\_HALEY\_E\_027111];

**EXHIBIT J:** Worksite Enforcement and Compliance Focus on the Future (Sept. 16, 2013) [TW\_H\_XY\_000263], the metadata produced indicates this document was authored by Shana Nishihira;

**EXHIBIT K:** Email from Shana Nishihira to Eleanor Macapia; Judy Fenney (May 2, 2013) [TW\_HALEY\_E\_028477];

**EXHIBIT L:** Email from Eleanor Macapia to Ziv Gonen; Dillana Lim (Oct. 24, 2011), included within email string Eleanor Macapia to Ziv Gonen (Oct. 25, 2011) [TW\_HALEY\_E\_039266];

**EXHIBIT M:** Excerpts of Transcript of Oral Argument on Defendant’s Motion to Dismiss the First Amended Complaint (Mar. 14, 2014);

**EXHIBIT N:** Defendant's Revised Privilege Log (Aug. 6, 2014);

**EXHIBIT O:** Email from Eleanor Macapia to Screening Operations; Account Management (Mar. 2, 2012) [TW\_HALEY\_E\_024725];

**EXHIBIT P:** Email from Shana Nishihira to Enterprise Screening QA (Mar. 2, 2012) [TW\_HALEY\_E\_025074];

**EXHIBIT Q:** Email from Eleanor Macapia to Judy Fenney; Shana Nishihira (Mar. 2, 2012); [TW\_HALEY\_E\_023395];

**EXHIBIT R:** Email from Judy Fenney to Eleanor Macapia; Shana Nishihira (Mar. 2, 2012) [TW\_HALEY\_E\_025024];

**EXHIBIT S:** Email from Judy Fenney to Record Screening – Vendor Records (Mar. 4, 2012) [TW\_HALEY\_E\_031508];

**EXHIBIT T:** Email from Judy Fenney to Ruby Blanchette (Mar. 4, 2012) [TW\_HALEY\_E\_030127];

**EXHIBIT U:** Email from Judy Fenney to Jason Fanaroff (Mar. 4, 2012) [TW\_HALEY\_E\_030125];

**EXHIBIT V:** Email from Judy Fenney to Donna Bowden; Veronica Adams (Mar. 4, 2012) [TW\_HALEY\_E\_030123];

**EXHIBIT W:** Email from Judy Fenney to Stacy Shepp (Mar. 4, 2012) [TW\_HALEY\_E\_030121];

**EXHIBIT X:** Email Judy Fenney to kharding@infotrackinc.com; dmillin@infotrackinc.com (Mar. 4, 2014) [TW\_HALEY\_E\_030119];

**EXHIBIT Y:** Plaintiff's Requests for Production of Documents, Set I;

**EXHIBIT Z:** Plaintiff's Requests for Production of Documents, Set II; and

**EXHIBIT AA:** Plaintiff's Interrogatories, Set II.

3. Plaintiff served her first document requests on February 20, 2014.

4. Defendant produced documents in response to this first set of document requests on a "rolling basis." In April and May of 2014, Defendant produced documents on seven

1 different occasions. Because of the rolling document production, the depositions of TalentWise  
2 employees Eleanor Macapia and Carl Cogdill had to be rescheduled several times so that  
3 Plaintiff could review the document production before the depositions. The depositions were  
4 finally taken on June 4 and 5, 2014, where Plaintiff first learned that in March of 2012,  
5 Defendant had changed its policy such that it no longer reported dismissed charges. While  
6 Macapia insisted that the policy change had nothing to do with a change in TalentWise's  
7 interpretation of what was reportable under the FCRA, Cogdill testified that the company had  
8 received a legal opinion about the reporting of dismissed charges shortly before the policy  
9 change. Cogdill Dep. at 63; Macapia Dep. at 36-7.

10 5. Both Macapia and Cogdill testified that the March 2012 policy change was set  
11 forth in a written document. Cogdill Dep. at 43; Macapia Dep. at 59-60. As of the filing of  
12 Defendant's motion for summary judgment, however, it had not produced a document that  
13 clearly set forth Defendant's policy on reporting dismissed charges that are associated with a  
14 conviction, or which set forth Defendant's interpretation of the FCRA. Defendant has also not  
15 produced any legal opinion regarding the reporting of dismissed charges, and objected to  
16 Plaintiff's request for such opinions as privileged.

17 6. The week after Macapia and Cogdill's deposition, Plaintiff served a second set  
18 of interrogatories and document requests, requesting more information about Defendant's  
19 communications with its vendors regarding reporting dismissed charges and Defendant's ability  
20 to edit its vendor's reports. As of the filing of Defendant's motion for summary judgment,  
21 Defendant's response to the second set of discovery requests was still outstanding.

22 7. On July 14, three days after filing its motion for partial summary judgment,  
23 Defendant produced its most voluminous document production, totaling almost 19,000 pages of  
24 documents.

25 8. On August 6, Defendant produced another 10,002 pages of documents. My law  
26 firm hired an attorney to help review the documents from these productions. Our review was  
27 not completed until August 18.

1           9.       On August 15, Defendant's counsel informed me for the first time that it had  
2 produced all documents it considered relevant, non-privileged and responsive to Plaintiff's  
3 document requests.

4           10.     The internal emails discussing Defendant's 2012 policy change and the emails  
5 communicating the policy change to the vendors were produced only after Defendant filed its  
6 motion for partial summary judgment.

7           11.     Plaintiff intends to take the depositions of Judy Fenney and Shana Nishihira as  
8 both of them have knowledge as to Defendant's interpretation of the FCRA. Depending on the  
9 results of those depositions, Plaintiff may need to take further discovery including re-deposing  
10 Eleanor Macapia and former employee Nadja Jaganjac. Plaintiff is also in the process of  
11 evaluating various deficiencies in Defendant's document production, and intends to seek a meet  
12 and confer session with Defendant about those issues forthwith.

13  
14 The foregoing statement is made under penalty of perjury and is true and correct to the best of  
15 my knowledge and belief.

16  
17 Date: September 2, 2014

/s/Daniel C. Bryden

Daniel C. Bryden